

Signed at Washington, DC, this 24th day of January 1995.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

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**[Prohibited Transaction Exemption 95-04;
Exemption Application No. D-09721, et al.]**

Grant of Individual Exemptions; Mid-Hudson Medical Group, P.C. Money Purchase Pension Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836,

32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Mid-Hudson Medical Group, P.C. Money Purchase Pension Trust (the Plan) Located in Fishkill, New York

[Prohibited Transaction Exemption 95-04; Exemption Application No. D-09721]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: 1) the acquisition by the Plan of certain improved real property (the Property) from unrelated parties for a sales price of \$562,500; and 2) the leasing (the Lease) of the Property by the Plan to Mid-Hudson Medical Group, P.C. (the Employer), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The Plan pays no more than the fair market value of the Property; (b) the Property represents no more than 25% of the value of the Plan's assets; (c) the terms of the Lease are, and will remain, at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (d) the fair market rental value has been, and will continue to be determined on an annual basis by a qualified, independent appraiser; (e) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and (f) the Plan's independent fiduciary will continue to monitor the transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 5, 1994 at 59 FR 62420.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

John R. Lyman Company 401(k) Profit Sharing Plan (the Plan) Located in Chicopee, Massachusetts

[Prohibited Transaction Exemption 95-05; Exemption Application No. D-09759]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of Guaranteed Investment Contract CGO 1303A3A and Guaranteed Investment Contract CGO 1344A3A (collectively, the GICs) issued by Executive Life Insurance Company (Executive Life), a California corporation, to John R. Lyman Company, a Massachusetts corporation (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GICs as determined on the date of the Sale, or an amount that is equal to the total amount expended by the Plan for the GICs at the time of acquisition, less withdrawals, plus the amount the GICs would have earned by the date of the Sale if Executive Life had not been placed under conservatorship; and (4) any funds from the GICs in excess of the Sale price that are received by the Employer, or its successors, from Executive Life, or its successors, after the date of the Sale are paid to the Plan.

For a more complete statement of the facts and representations representing the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 28, 1994, at 59 FR 60847.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Regency Marketing Corporation Restated Employees Profit Sharing Plan and Trust (the Plan) Located in West Bloomfield, Michigan

[Prohibited Transaction Exemption 95-06; Application No. D-9763]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) of \$84,667 by the Plan to Frankenmuth

Brewing Company, a disqualified person with respect to the Plan.¹

This exemption is conditioned upon the following requirements: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the Loan does not exceed twenty-five percent of the assets of the Plan at any time during the duration of the Loan; (c) the Loan is secured by a first deed of trust on certain real property (the Property) which has been appraised by an independent, qualified appraiser to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loan; (d) the fair market value of the Property remains at least equal to 150 percent of the outstanding balance of the Loan throughout the duration of the Loan; (e) the Plan trustees determine on behalf of the Plan that the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; and (f) the Plan trustees monitor compliance with the terms and conditions of the Loan throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 19, 1994, at 59 FR 65395.

For Further Information Contact: Kathryn Parr of the Department, telephone (202) 219-8971. (This is not a toll-free number).

Lucky Electric Supply Inc. Employees Pension Plan (the Plan) Located in Memphis, Tennessee

[Prohibited Transaction Exemption 95-07; Exemption Application No. D-09792]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of through (E) of the Code, shall not apply to the cash sale by the Plan to Lucky Electric Supply, Inc., the sponsor of the Plan, of a group annuity contract (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual

Benefit); provided that the following conditions are satisfied:

(A) The sale is a one-time transaction for cash;

(B) The Plan does not suffer any loss or incur any expenses in the transaction;

(3) The Plan receives a purchase price of no less than the fair market value of the GAC at the time of the transaction; and

(4) The proceeds of the sale are used solely to discharge the Plan's obligations to participants and beneficiaries in connection with the termination of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 28, 1994 at 59 FR 60842.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Stratus Computer, Inc. Employees' Capital Accumulation Plan (the Plan) Located in Marlboro, Massachusetts

[Prohibited Transaction Exemption 95-08; Exemption Application No. D-09823]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the extension of credit by Stratus Computer, Inc. (Stratus) to the Plan in the form of a loan (the Loan) with respect to Guaranteed Investment Contract, Number 62456 (the GIC) issued by Confederated Life Insurance Company of Canada (CL); and (2) the Plan's potential repayment of the Loan (the Repayments), provided: (a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plan; (c) the amount of the Loan is no less than the accumulated book value of the GIC as of August 12, 1994; (d) the Repayments are restricted to the amounts, if any, paid to the Plan after August 12, 1994, by CL or other responsible third parties with respect to the GIC (the GIC Proceeds); (e) the Repayments do not exceed the total amount of the Loan; and (f) the Repayments are waived to the extent the Loan exceeds the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on December 5, 1994 at 59 FR 62419.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 24th day of January, 1995.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95-010]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

¹ Since Randall Heine and his wife, Paula Heine, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.